UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	
	:	
v.	:	**Case No.: 21-CR-567-1 (RCL)**
	:	
MARSHALL NEEFE,	:	
	:	
Defendant.	:	

UNITED STATES' OPPOSITION TO
MOTION TO APPEAL DETENTION ORDER

The United States, by and through its attorney, the United States Attorney for the District of Columbia, respectfully opposes Defendant Marshall Neefe's motion to appeal the pretrial detention order ("Mot."), filed on February 15, 2022 (ECF No. 42), in the above-captioned case. A Pennsylvania Magistrate Judge issued the detention order on September 14, 2021. In support of this opposition, the government relies on the following factual and legal authorities, as well as any that may be offered at the hearing on the motion.

I. PROCEDURAL BACKGROUND

On January 26, 2022, Neefe and his codefendant, Charles Bradford Smith (also known as "Brad Smith"), were charged by a 14-count superseding indictment in the United States District Court for the District of Columbia. (ECF No. 39.)[1] Twelve of the indictment's counts pertain to Neefe:

(1) Count One: Conspiracy to Commit Obstruction of an Official Proceeding (in violation of 18 U.S.C. §1512(k));

(2) Count Two: Obstruction of an Official Proceeding and Aiding and Abetting (18 U.S.C. §§ 1512(c)(2), 2);

(3) Count Three: Civil Disorder (18 U.S.C. § 231(a)(3));

[1] Neefe and Smith were originally charged in a 15-count indictment on September 8, 2021. (ECF No. 1.)

(4) Count Four: Assaulting, Resisting, or Impeding Certain Officers Using a Dangerous Weapon and Aiding and Abetting (18 U.S.C. §§ 111(a)(1) and (b), 2);

(5) Count Five: Entering and Remaining in a Restricted Building or Grounds with a Deadly or Dangerous Weapon (Wooden Club) (18 U.S.C. § 1752(a)(1) and (b)(1)(A);

(6) Count Six: Entering and Remaining in a Restricted Building or Grounds with a Deadly or Dangerous Weapon (Large Metal Sign Frame) (18 U.S.C. § 1752(a)(1) and (b)(1)(A);

(7) Count Seven: Disorderly and Disruptive Conduct in a Restricted Building or Grounds with a Deadly or Dangerous Weapon (Wooden Club) (18 U.S.C. § 1752(a)(2) and (b)(1)(A));

(8) Count Eight: Disorderly and Disruptive Conduct in a Restricted Building or Grounds with a Deadly or Dangerous Weapon (Large Metal Sign Frame) (18 U.S.C. § 1752(a)(2) and (b)(1)(A));

(9) Count Ten: Engaging in Physical Violence in a Restricted Building or grounds with a Deadly or Dangerous Weapon (Large Metal Sign Frame) and Aiding and Abetting (18 U.S.C. §§ 1754(a)(4) and (b)(1)(A), 2);

(10) Count Eleven: Disorderly Conduct in a Capitol Building or Grounds (40 U.S.C. § 5104(e)(2)(D));

(11) Count Thirteen: Act of Physical Violence in the Capitol Grounds or Buildings (40 U.S.C. § 5104(e)(2)(F)); and

(12) Count Fourteen: Parading, Demonstrating, or Picketing in a Capitol Building (40 U.S.C. § 5104(e)(2)(G)).

These charges stem from Neefe's involvement in the attack on and riot at the United States Capitol in Washington, D.C., on January 6, 2021.

On September 13, 2021, agents of the Federal Bureau of Investigation ("FBI") arrested Neefe at his residence in Newville, Pennsylvania, and brought him before a U.S. Magistrate Judge in the Middle District of Pennsylvania for an initial appearance and removal to this District. At a hearing that day, the government orally moved for Neefe's detention pending trial, pursuant to 18 U.S.C. §§ 5142(f)(1)(A) and (f)(1)(E). The detention hearing was continued until September 14, 2021, and at the conclusion of the hearing, the Magistrate Judge granted the government's motion

and ordered him detained pending trial.[2] Neefe did not move for a reopening of the detention hearing or for a review of the detention order, nor did he appeal that order. Neefe had his initial appearance before a Magistrate Judge in the District of Columbia on September 16, 2021, and remains detained pending trial. The defense motion filed on February 15, 2022, is the first instance in which Neefe has sought to challenge the detention order.

II. FACTUAL BACKGROUND

A. The 2020 United States Presidential Election and the Official Proceeding on January 6, 2021

The 2020 United States Presidential Election occurred on November 3, 2020.

The United States Electoral College ("Electoral College") is a group required by the Constitution to form every four years for the sole purpose of electing the president and vice president, with each state appointing its own electors in a number equal to the size of that state's Congressional delegation.

On December 14, 2020, the presidential electors of the Electoral College met in the state capital of each state and in the District of Columbia and formalized the result of the 2020 U.S. Presidential Election: Joseph R. Biden Jr. and Kamala D. Harris were declared to have won sufficient votes to be elected the next president and vice president of the United States.

On January 6, 2021, a Joint Session of the United States House of Representatives and the United States Senate (the "Joint Session") convened in the United States Capitol building (the "Capitol"). The purpose of the Joint Session was to open, count, and resolve any objections to the Electoral College vote of the 2020 U.S. Presidential Election, and to certify the results of the

[2] The transcripts of the detention hearing in the Middle District of Pennsylvania from September 13 and September 14, 2021, are attached to Neefe's motion. (ECF No. 42.)

Electoral College vote ("Certification of the Electoral College vote") as set out in the Twelfth Amendment of the Constitution of the United States and 3 U.S.C. §§ l5-18.

B. The Attack at the Capitol on January 6, 2021

The Capitol is secured 24 hours a day by United States Capitol police ("Capitol Police"). The Capitol Police maintain permanent and temporary barriers to restrict access to the Capitol exterior, and only authorized individuals with appropriate identification are allowed inside the Capitol building.

On January 6, 2021, the exterior plaza of the Capitol was closed to members of the public.

On January 6, 2021, at approximately 1:00 p.m., the Joint Session convened in the Capitol building for the Certification of the Electoral College vote. Vice President Michael R. Pence presided, first in the Joint Session and then in the Senate chamber.

A large crowd began to gather outside the Capitol perimeter as the Joint Session got underway. Crowd members eventually forced their way through, up, and over Capitol Police barricades onto the Capitol grounds and advanced to the building's exterior façade. Capitol Police officers attempted to maintain order and stop the crowd from entering the Capitol building, to which the doors and windows were locked or otherwise secured. Nonetheless, shortly after 2:00 p.m., crowd members forced entry into the Capitol building by breaking windows, ramming open doors, and assaulting Capitol Police officers. Other crowd members encouraged and otherwise assisted the forced entry. The crowd was not lawfully authorized to enter or remain inside the Capitol building or grounds, and no crowd member submitted to security screenings or weapons checks by Capitol Police or other security officials.

Shortly thereafter, at approximately 2:20 p.m., members of the House and Senate (including Vice President Pence) were evacuated from their respective chambers. The Joint

Session was halted while Capitol Police and other law-enforcement officers worked to restore order and clear the Capitol building and grounds of the unlawful occupants.

Later that night, law enforcement regained control of the Capitol building and grounds. At approximately 8:00 p.m., the Joint Session reconvened, presided over by Vice President Pence.

C. Neefe's Planning Leading up to January 6, 2021

From at least November 4, 2020, and continuing up to and including January 6, 2021, Neefe and his coconspirator Smith used Facebook to communicate with each other and others to express dissatisfaction with the results of the 2020 presidential election and share thoughts about how Donald Trump could remain president following the Certification of the Electoral College vote set to occur in Washington, D.C., on January 6, 2021.

On November 4, 2020, the day after Election Day, Neefe wrote Smith, "Im getting ready to storm D.C. . . . Seriously tho if biden wins theres a good chance ill do something for the better of man." Smith remarked, "We all deep down knew this was how the election was going to go. Now if Trump wins the riots will be 50 times worse." Neefe replied, "Hope it burns either way." Smith added, "Me to. This country needs to split up immediately." Neefe replied, "Why shouldnt we be the ones to kick it off?" On December 9, 2020, in response to another Facebook user's message about YouTube's new terms of service regarding election coverage, Smith wrote, "I know. If SCOTUS doesn't act people are going to die. I hope this starts the War."

In the weeks leading up to January 6, 2021, Neefe and Smith shared their intentions and plans to travel to Washington on that date with one another and others. For example, on December 22, 2020, Neefe and Smith had the following conversation on Facebook:

> SMITH: The call to action was put out to be in DC on January 6th from the Don himself. The reason is that's the day pence counts them up and if the entire city is full of trump supporters it will stop the for sure riots from burning down the city at least for a while.

NEEFE: We goin?

NEEFE: Cause hot damn son i really wanna crack some commit skulls

Smith also encouraged others to join him and Neefe to travel to Washington on January 6, 2021. Smith wrote another Facebook user on December 22, 2020, "Hey man if you wanna go down to DC on the 6th Trump is asking everyone to go. That's the day Pence counts up the votes and they need supporters to fill the streets so when they refuse to back down the city doesn't burn down right away. It's the only time hes ever specifically asked for people to show up. He didn't say that's why but it's obviously why."

On December 22-23, 2020, Smith messaged other Facebook users to urge them to come to Washington, D.C., "to fill the streets so when they refuse to back down the city doesn't burn down right away," and told a Facebook friend he could "ride down with Me & Marshall." Smith also told a friend they were buying axe handles and nailing American flags to them, "so we can wave the flag but also have a giant beating stick just in case."

From December 25-26, 2020, Neefe and Smith discussed bringing "batons" with them to Washington on January 6, 2021. Neefe sent a photograph of a wooden club he had made to Smith and others, and had the following conversation with another individual, as depicted in this photo from his Facebook records and following dialogue:

NEEFE:	Now introducing The Commie Knocker
NEEFE:	Getting prepped for the 6th lol
Other User:	Awh hell yeah what's the 6th
NEEFE:	Going to D.C. to make sure them lil bitches dont burn down the city when trump is announced as president

On December 31, 2020, Smith continued to message other Facebook users, encouraging them to go to Washington, D.C., on January 6, 2021. For example, he told one user, "Take off the 6th man! It's the Big one!!! Trump is literally calling people to DC in a show of force. Militias will be there and if there's enough people they may fucking storm the buildings and take out the trash right there."

In addition, on December 31, 2020, Neefe and Smith continued to discuss the election results and their plans to attend the upcoming rally in Washington, D.C., on January 6, 2021. Smith messaged Neefe, "I cant wait for DC! Apparently it's going to be WAY bigger lol. If it's big enough we should all just storm the buildings. . . . Seriously. I was talking to my Dad about how easy that would be with enough people."

D. January 6, 2021: Neefe and Smith's Participation in the Capitol Riot

On January 6, 2021, Smith communicated on Facebook that he and Neefe traveled to Washington, D.C., together, and referred to Neefe as his "ride." Photos and videos taken on January 6, 2021, and shared on their Facebook pages show both Neefe and Smith outside the Capitol on that date, approaching the Capitol grounds, and on the grounds participating in the riot. Smith later shared on Facebook a video that shows Smith walking toward the Capitol building with Neefe, stating as they both smiled, "They're rushing the Capitol right now. . . . There's people literally rushing it right now. Sic semper tyrannis." Smith sent this video to another Facebook user with the caption "Heres when we first got there and just started rushing it. First few hundred people to hit it." Smith's video depicts him and Neefe together, walking towards the Capitol, smiling, with Neefe holding the wooden club, as depicted in this image:

On a video he recorded as he approached the Capitol, Smith stated, with Neefe walking beside him, "We are literally storming the Capitol. The gate – this whole area is blocked off to the public. We're saying, 'Fuck it!' Sic semper tyrannis, bitch. Down with tyrants." Seconds

after Smith made this statement, his video recorded this image of Neefe, raising his club with the flag attached to it above his head:

In another video Smith recorded after he and Neefe entered Capitol grounds, Smith stated, "We're literally here. We stormed the gates of the Capitol. Everybody just kept rushing." He then turned the camera on Neefe, who appeared to be within arm's length of Smith and was still holding the wood club in his right hand, and stated, "What's up, Marshall?" Neefe responded by looking into the camera and nodding affirmatively.

On the Capitol grounds, Neefe participated in hoisting and pushing a large metal sign frame holding an oversized "TRUMP" sign into a defensive line of Metropolitan Police Department ("MPD") officers attempting to prevent rioters from further advancing on the West Front plaza of the Capitol. Images of Neefe and Smith participating in this assault are depicted below, from

-2020-
KEEP AMERICA

Of note, in the second image, above, Neefe's right hand is on the frame of the sign as he, Smith, and others assist in moving the sign forward into the line of defending officers.[3]

In addition, Neefe entered the Capitol building, including the Rotunda, where he attempted to make himself immovable and disregarded commands from law-enforcement officers to leave the Rotunda, as depicted in these screenshots from police body-worn-camera video (circled in yellow):

These images do not show Neefe assaulting the officers.

E. Neefe's Comments Immediately Following His Participation in the Capitol Riot

As revealed in his Facebook records, Neefe continued to discuss his actions after he and Smith left the Capitol grounds on January 6, 2021.

From 8:56-8:58 p.m.[4] on January 6, Neefe commented on photos of himself at the Capitol earlier that day: "Mace, pepper balls and tear gas lol im battle ready folks." He also remarked, "literally cannot count how many times i was maced. Got a good shot in the mouth tho. Doesnt taste too bad. Got shot 3 times with pepper balls and tear gassed in the building lol," and "I was

[3] On November 1, 2021, the government emailed Neefe's counsel similar screenshots from this video in which it circled the area showing Neefe's right hand on the sign.
[4] All times indicated in the factual background are approximate.

amidst some of the first to make my way in." At 9:04 p.m., he posted about someone getting shot at the Capitol and stated, "Then we heard the news on pence . . . Amd lost it . . . So we stormed."

At 9:12 p.m., Neefe continued discussing his participation in the riot with another Facebook user and stated, "Im bringing a gun next time idec," the last phrase being an internet abbreviation for "I don't even care." From 9:13-9:14 p.m., he continued the discussion by expressing his expectation that further violence would occur and his desire to "line[] up and put down" officers who defended the Capitol:

> Its only going to get more violent . . . Today was total pussy shit dude . . . If I had it my way every cop who hurled a baton or maced on of us would be lined up and put down . . . We made sure they knew we fucking OWN them.

F. Neefe's Arrest and Postarrest Interviews

Neefe was arrested at his home in Newville, Pennsylvania, on September 13, 2021. Following his arrest, he gave a voluntary, post-*Miranda* interview with the FBI. As reported in the FBI's summary of that interview, Neefe said he was heavily influenced by QAnon conspiracy theories and that he and Smith discussed plans to travel to Washington within a month of January 6, 2021. He admitted making a wooden club with an American flag stapled to it to take Washington to serve as a barrier between himself and "possible Antifa."

Neefe said that after arriving in Washington that day and attending the rally President Trump had planned, he and Smith followed the crowd to the Capitol. Neefe admitted breaking through a security barrier and screaming at the politicians inside the Capitol. He also confessed that he and others passed a large "TRUMP" sign overhead and used it to disrupt and break through a police line. He said he was struck with mace and pepper balls.[5]

[5] The FBI Form 302, which summarized this interview, was provided to former counsel for Neefe on September 21, 2021 (ECF. No. 24-1), and made it available to current counsel on September 28, 2021. The direct quote from the 302, which summarizes Neefe's admissions, reads, "A large 'TRUMP' sign was passed overhead and was used to disrupt and break through the police line by Neefe and others. NEEFE was sprayed with mace and was struck with

Neefe also admitted he was part of a group that pushed against the police at a door to the Capitol. At some point, police stepped aside and the rioters got inside the building. Neefe admitted being in the Rotunda and a nearby hallway, and at some point, he got "knocked over" and lost the club he brought with him.[6] He got sprayed with mace again inside the Capitol and decided to leave.

Neefe told the FBI he believed what he did on January 6, 2021, was wrong and he no longer supports QAnon conspiracy theories.

During his court processing and interview with the Pretrial Services Agency, Neefe reported he owned a Canik .9mm handgun and an Armalite AR-10 rifle. He further stated his fiancée who was residing with him owns a Smith and Wesson .380 caliber handgun. In addition, Neefe reported a substance-abuse history of drinking alcohol (monthly, with his last use about one month before his arrest), and taking cannabinoids (weekly, last use one week before arrest), amphetamines (occasionally, last use nine years before arrest), and prescription opiates (occasionally, last use 10 years before arrest). He did not report abusing any other substances.

III. LEGAL AUTHORITIES

A detention hearing may be reopened at any time before trial if the judicial officer finds that "information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue whether there are conditions of release that will reasonably assure the appearance of such person as required and the safety of any other person and the community." 18 U.S.C. § 3142(f)(2).[7]

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pepper balls. NEEFE made he [*sic*]way closer to the Capitol when the security line was breached."

[6] The direct quote from the FBI Form 302, which summarizes Neefe's admissions, is: "When inside, NEEFE was in the rotunda and was part of a group that traveled to a side hallway. NEEFE then got knocked over and lost the homemade club he had which was stapled to a United States flag."

[7] For clarity, the citation here to § 3142(f)(2) refers to the block of text underneath § 3142(f)(2)(B).

"'New and material information consists of something other than a defendant's own evaluation of his character or the strength of the case against him'; instead, it must consist of 'truly changed circumstances, something unexpected, or a significant event.'" *United States v. Lee*, 451 F. Supp. 3d 1, 5 (D.D.C. 2020) (quoting *United States v. Esposito*, 354 F. Supp. 3d 354, 359 (S.D.N.Y. 2019)). Similarly, pursuant to 18 U.S.C. § 3145(b), "[i]f a person is ordered detained by a magistrate judge . . . the person may file, with the court having original jurisdiction over the offense, a motion for revocation or amendment of the order." 18 U.S.C. § 3145(b). This motion "shall be determined promptly." *Id.*

District courts apply a de novo standard of review in evaluating a magistrate judge's detention decision. *United States v. Karni*, 298 F. Supp. 2d 129, 130 (D.D.C. 2004).[8]

The Court should analyze four factors under 18 U.S.C § 3142(g) in determining whether to detain the defendant pending trial: (1) the nature and circumstances of the offense charged; (2) the weight of the evidence against the defendant; (3) his history and characteristics; and (4) the nature and seriousness of the danger to any person or the community that would be posed by his release.

In the context of considering detention based on the potential dangerousness of Capitol rioters, the D.C. Circuit recently held that "those who actually assaulted police officers and broke through windows, doors, and barricades, and those who aided, conspired with, planned or coordinated such actions, are in a different category of dangerousness than those who cheered on

[8] While this Court's review of the detention decision is de novo, it bears noting that Magistrate Judge in the Middle District of Pennsylvania believed Neefe to be "the most disturbing defendant I have seen among those charged in connection with this incident" on January 6, 2021. *U.S. v. Marshall Neefe,* 21-mj-00088 (MCC) (M.D. Pa.), 9/14/2021 Tr. at 40. In finding by clear and convincing evidence that Neefe posed a danger to the community and to others if released, the Magistrate Judge relied, in part, on "finding that the conduct here is fraught with peril and violence and involved disturbing violence, and violence that was celebrated after the fact." *Id.*

the violence or entered the Capitol after others had cleared the way." *United States v. Munchel,* 991 F.3d 1273, 1284 (D.C. Cir. 2021).

IV. ARGUMENT

Neefe styles his motion as an "appeal" of the detention order,[9] but the text of his motion asks for "review" of the order and argues that he should be released pending trial. While Neefe fails to clearly set forth the authority for his motion, the government assumes he moves for either a reopening of the detention hearing under 18 U.S.C. § 3142(f)(2), or a review of the detention order under 18 U.S.C. § 3145(b) five months after the magistrate judge issued the order. Yet he offers no new or material evidence in support of a motion under 18 U.S.C. § 3142(f)(2). Instead, the belated motion consists of Neefe's self-serving characterizations and minimization of his own words and deeds as reflected in the unchanged evidence.

Among other things, Neefe argues "at no point" did he "engage[] in any physical altercation with anyone outside or inside the Capitol building." (Mot. at 8.) Instead, he was a "passive participant during the events [on January 6] and was not carrying any weapons inside the Capitol and made the mistake of walking into the Capitol Building alongside hundreds of other protestors." (*Id*.) He claims "[h]is actions do not indicate that he was carrying" the large metal sign frame, and he was merely "underneath the sign and did not use the sign in any way," and "held up his hands to protect himself." (*Id.* at 4.) He asserts that comments he made on social media were "inappropriate," but "taken out of context and misrepresented to the Court," including a statement about "'dragging somebody by a truck by a rope or a chain.'" (*Id*. at 7-8). Generally, he contends that he "has always led a peaceful and law-abiding life." (*Id.* at 11.) The evidence in this case belies these assertions and his arguments fail.

[9] An appeal of a detention order, or from a decision denying revocation or amendment of such an order, is subject to the provisions of 18 U.S.C. § 3145(c) and would not be heard before this Court.

As a threshold legal matter, Neefe has not presented any evidence of "truly changed circumstances, something unexpected, or a significant event," *Lee*, 451 F. Supp. 3d at 5, that has material bearing on the issue of his detention. The evidence on which he relies was produced to the defense on or before November 1, 2021.[10] The video the government produced on that date shows another angle of the assault with the large metal sign frame, and the government also disclosed screenshots from that video showing Neefe's hand on the frame and helping to move the sign forward into a line of officers defending the Capitol. If anything, that video materially *strengthened* the government's case against Neefe and its basis for seeking detention. Further, the evidence on which Neefe bases his motion was produced to the defense months ago. For this reason alone, Neefe's motion lacks merit.

In addition, based on the factors set forth in 18 U.S.C. § 3142(g), there is no condition or combination of conditions that would reasonably assure the safety of any other person and the community if Neefe is released.

A. The Nature and Circumstances of the Offense

Neefe's crimes are serious and cannot be viewed in isolation—he was one of thousands of individuals who descended upon the Capitol on January 6, 2021, to obstruct the Certification of Electoral College vote. This infamous event posed a grave threat to this Nation's democratic traditions and peaceful transfer of power.

In assessing the nature and circumstances of the offense under § 3142(g)(1), this Court has outlined specific offense characteristics that serve as guideposts relevant to assessing the comparative culpability of each defendant in relation to the other Capitol rioters. *United States v. Chrestman*, No. 21-MJ-218 (ZMF), 525 F.Supp.3d, 26-27 (D.D.C. Feb. 26, 2021). Almost all

[10] In addition, the government produced the lion's share of FBI discoverable case file (aside from electronic evidence) on December 8, 2021. (*See* ECF No. 36 at 2.)

the *Chrestman* factors put Neefe in a more serious category and demonstrate his dangerousness. He was far from a "passive" participant in the Capitol riot.

First, Neefe has been charged with and a crime of violence (Count Four of the superseding indictment) and multiple felonies involving two different dangerous weapons (Counts Five through Eight and Count Ten). *Id.* at 26; *see* 18 U.S.C. § 3142(g)(1) (requiring judicial officer to assess whether charged crime was a "crime of violence").

Second, Neefe engaged in extensive "prior planning" before arriving at the Capitol. *Chrestman,* 525 F.Supp.3d at 26. This was no momentary lapse of judgment. As his Facebook messages and the video evidence show, he conspired with Smith to travel to Washington with weapons to ensure the Certification of the Electoral College vote resolved in Trump's favor. Neefe even went so far as to make a wooden club for that purpose—the "Commie Knocker"—and he chronicled the stages of his woodwork. He and Smith cemented their agreement to obstruct the certification when they gleefully entered the Capitol grounds as Smith proclaimed, "We are literally storming the Capitol. . . . We're saying, 'fuck it.'" Seconds after that statement, Neefe raised his wooden club with the small American flag attached to it above his head in a deliberate gesture. As the Court said in *Chrestman,* "[t]hese motives and steps taken in anticipation of an attack on Congress speak volumes to both the gravity of the charged offense, as a premeditated component of an attempt to halt the operation of our democratic process, and the danger a defendant poses not just to the community in which he resides, but to the American public as a whole." *Id*.

Third, Neefe's coordination with other participants before and during the attack indicated he acted "deliberately to amplify and assure the success of the breach of the Capitol." *Id.* As already explained, he engaged in substantial preplanning with Smith to obstruct the certification,

including arming himself and planning for the possibility of violence. When he arrived on Capitol grounds, he confirmed his willingness to engage in violence by joining a mob to attack a defensive line of officers with the large metal sign frame on the West Plaza. He admitted to the FBI that this assault was designed to break that line.

Fourth, Neefe's "movements" during the riot—including his violent conduct outside the Capitol and his decision to enter the Capitol and attempt to make himself immovable as officers tried to drive rioters out of the Rotunda—reflect the "egregiousness of his conduct." *Id.* at 27. In addition, his admission that he got knocked over and lost his wooden club at some point inside the Capitol belies his claim now that he did not bring the club into the building.

Fifth, Neefe's actions demonstrated a dangerous hostility to law enforcement. As the Court noted in *Chrestman*, "Grave concerns are implicated if a defendant actively threatened or confronted federal officials or law enforcement." *Id.* In addition to assaulting the officers with the large metal sign frame, he admitted being part of a group that pushed against the police at a door to the Capitol. Further, he refused officers' commands to leave the Rotunda before he eventually left the building. Even more appalling, on the evening of January 6 when he reflected on his actions earlier that day, he expressed a desire to "line[] up and put down" those officers who opposed him and defended the Capitol, and stated, "We made sure we fucking OWN them."

Therefore, the nature and circumstances of his offenses weigh strongly in favor of detention.

B. The Weight of the Evidence against the Defendant

Under § 3142(g)(2), the weight of the evidence is overwhelming and weighs heavily in favor of detention. Facebook evidence of Neefe's admissions demonstrate his planning to obstruct the Congressional session on January 6, 2021, and to bring the wooden club he fabricated

to participate in civil disorder in Washington. Neefe was captured in photos and video from multiple camera angles approaching the Capitol with this weapon, raising it in a deliberate gesture, and participating in the assault of police officers with another weapon, the large metal sign frame. Police body-worn-camera video depicted Neefe inside the Rotunda, disobeying police commands to leave that space.

On the evening of January 6, he made further admissions on Facebook confirming his participation in the riot, his intention to engage in further violence by "bringing a gun next time," and his desire to "line[] up and put down" the officers who defended the Capitol. Even worse, he boasted that he was "battle ready" and "amidst some of the first to make my way in" to the building, and thought it was funny that he had gotten "shot 3 times with pepper balls and tear gassed in the building lol." During his postarrest, post-*Miranda* interview with the FBI, he admitted participating in assaulting the officers with the large metal sign frame and confessed that action was designed to breach the officers' defensive line. Therefore, there is very strong evidence of guilt and a conviction is likely.

C. The History and Characteristics of the Defendant

Neefe has no criminal history, a factor that weighs against detention under § 3142(g)(3). But his characteristics provide ample troubling evidence he would pose a continuing danger to others and the community if he is released.

History of Abusing Controlled Substances while Possessing Firearms

Contrary to his contention that he has "always led a peaceful and law-abiding life," Neefe has a history of abusing controlled substances while contemporaneously possessing firearms. During his Pretrial Services interview in the Middle District of Pennsylvania following his arrest on September 13, 2021, Neefe admitted to weekly use of cannabinoids and to owning a .9mm

handgun and an AR-10 rifle.

Neefe's Facebook records further reveal his history of polydrug abuse— lysergic acid diethylamide ("LSD"), which he had not reported to Pretrial Services,[11] and cannabis products—contemporaneously to possessing firearms in at least November 2020.

For example, on November 12, 2020, at approximately 6:40 p.m., Neefe wrote another Facebook user, "Hey man you able to set up wac for tomorrow? [Names redacted] smoked 110 dollars worth of my weed in less than a week so im buying for me only from now on. Im fucking heated rn." "Rn" is an internet abbreviation for "right now."

On November 15, 2020, Smith messaged Neefe through Facebook asking if he wanted to "smonk," an apparent slang term for using cannabis product. On November 21, 2020, at 8:31 p.m., Neefe and another user talked about one of their acquaintances. Neefe asked the other user, "Hes wondering if you could run us a torch out? I brought dabs and he wants one and my torch is ded. You more than welcome to hang and smonk." A "dab" is a term for a usable dose of marijuana concentrate, which typically is more potent than a smokable marijuana cigarette. A user typically consumes a dab by heating it, often with a butane torch, to vaporize the concentrate so it can be inhaled.[12] On November 24, 2020, another Facebook user asked if she and someone else could "have [Neefe's] dab." Neefe replied, "No . . . Seriously i will not let you have anymore of mine if you cant respect i saved it . . . I think its time for a break with weed for you and I."

On November 25, 2020, Smith asked Neefe by Facebook Messenger, "Hey man would

[11] During the detention hearing in the Middle District of Pennsylvania, the Magistrate Judge voiced "concern[] about the lack of apparent candor in terms of what may be polysubstance drug abuse on [Neefe's] part." *U.S. v. Marshall Neefe,* 21-mj-00088 (MCC) (M.D. Pa.), 9/14/2021 Tr. at 40.

[12] Drug Enforcement Admin. ("DEA"), *Drug Slang Code Words* 5 (Nov. 2017), available at https://www.dea.gov/sites/default/files/2018-07/DIR-020-17%20Drug%20Slang%20Code%20Words.pdf; *What is Dabbing?,* Merriam-Webster.com, https://www.merriam-webster.com/words-at-play/what-is-dabbing (last visited Feb. 15, 2022); Partnership to End Addiction, https://drugfree.org/drug-and-alcohol-news/marijuana-dabbing-causing-explosions-severe-burns/ (last visited Feb. 15, 2022).

you wanna go in on some weed again? Like the same thing 2 weeks ago." Neefe replied, "Would if i could man, rents comin up and idk if i can pay." Later in the day, Smith asked Neefe by Facebook Messenger, "U got any dabs?" At 5:12 p.m., Neefe replied, "Pickin up."

On December 1, 2020, shortly after 1:00 p.m., Neefe and another Facebook user discussed Neefe's supply of "Dabs" and whether another person had used some of Neefe's supply. Neefe replied, "I took it out to smoke last night and only had 1." Later, the other user sent Neefe the following photo:

The substance in the multicolored container, pictured above, is consistent with a "dab" of marijuana concentrate. After receiving the photo, Neefe replied, "There was def. More."

On November 23, 2020, another Facebook user asked Neefe, "Can you get a g of wax?" A "g" is term drug users often use as slang for a gram, and "wax" is a slang term for marijuana or hash-oil concentrate.[13] Neefe did not immediately answer the user's request, and they conversed about some other topics. On December 6, 2020, the other user asked Neefe, "Hey bud

[13] American Addiction Centers, Oxford Treatment Center, *The Potential Dangers of Highly-Concentrated Marijuana Wax,* https://oxfordtreatment.com/substance-abuse/marijuana/wax/ (last visited Feb. 12, 2022); *see, e.g,* NJ.com, *What is marijuana wax? 7 things you may not know about dabs, shatter and honey oil*, available at https://www.nj.com/news/2016/02/pro-marijuana_advocates_debate_officials_warnings.html#:~:text=*%20Wax%20can%20sell%20for%20up,on%20the%20quality%2C%20Goldstein%20said (last visited Feb. 13, 2022).

when can you get that wax?" Neefe replied, "Pickin up shortly."

From December 8-9, 2020, Neefe and the other Facebook user with whom he conversed on December 6, 2020, about "wax" had the following conversation:

Other User:	Hey i got that 31 for ya. Are you able to grab another g by chance? [12/8/2020, 9:16 p.m.]
NEEFE:	Ill hit the dude up, you able to see if you can get some cid? [12/9/2020, 9:27 a.m.]
NEEFE:	If so im looking for at most 20 hits [9:27 a.m.]
Other User:	Okay yea ill look around. [1:51 p.m.]
Other User:	Hey were you able to grab that g today by chance? [6:36 p.m.]
Other User:	If not its all good dude. Im just out of wax rn and need something for my back. My shit is all fucked up again and im having issues bending over [6:36 p.m.]

"Cid" is an apparent abbreviation for "acid" or LSD, and a request for 20 "hits" would be for 20 doses of LSD. Further, hits of LSD are typically administered on small pieces of blotter paper, or "tabs."[14]

On December 9-11, 2020, the other Facebook user and NEEFE resumed their conversation:

Other User:	Got your 20 hits ordered [12/9/2020, 8:18 p.m.]
Other User:	Should be with dude by tonight. I told him Saturday would work [8:19 p.m.]
Other User:	Its gonna be anywhere from 160 to 180 [8:19 p.m.]
Other User:	You are 100 percent that you want them tho right? Cuz he covered the 20 hits for you till Saturday when we can pick them up. [9:34 p.m.]
NEEFE:	Yeah im down for sure [10:53 p.m.]
Other User:	Can i buy 2 off of you Saturday? Idk if hes gonna have extra. Ill give you 10 a piece [12/10/2020, 5:11 p.m.]
Other User:	I kinda wanna trip now too lmfao [5:11 p.m.]

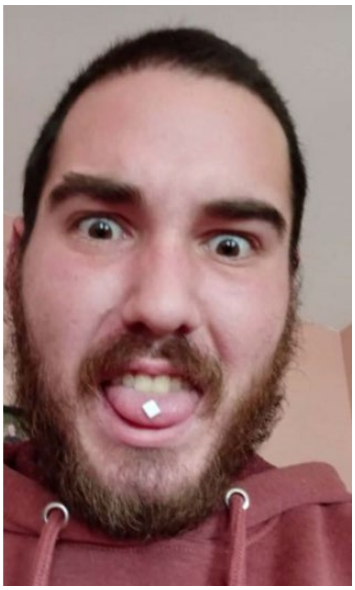
[14] DEA, *Drug Fact Sheet: LSD* (Apr. 2020), available at https://www.dea.gov/sites/default/files/2020-06/LSD-2020.pdf; DEA, *supra n. 10,* at 5.

NEEFE:	Hey man! Does your guy have the tabs already? If so i was wondering if he would be cool meeting up with me [12/11/2020, 3:22 p.m.]
NEEFE:	Also yes youre more than welcome to buy 2 lol [3:26 p.m.]
Other User:	Body Let me ask and ill get back to ya [3:44 p.m.]
Other User:	Yea its set [4:50 p.m.]
Other User:	Adam gave them to Gumby that way you can meet up with him. Just hit him up. Ill give you his number [4:50 p.m.]
Other User:	Its $180 altogether [4:51 p.m.]

On December 11, 2020, at approximately 4:52 p.m., the other Facebook user sent the following picture to Neefe:

The item depicted in the photo the other user sent Neefe is consistent with the appearance of a tab or multiple tabs of LSD, which is often packaged inside a foil wrapper. Within three minutes of receiving the photo, Neefe responded, "Thats 180 for 20 right?," to which the other user replied, "Yea."

On December 12, 2020—the day after he discussed obtaining the tabs with another Facebook user—Neefe sent the following photo of himself to Smith:



In this photo, Neefe appears to have a piece of blotter paper, consistent with a tab of LSD, on his tongue, consistent with the manner in which LSD users consume the drug. Within one minute of sending the photo, Neefe wrote, "I literally JUST put it in." Within one minute of that statement, Smith replied, "It's all good lol I literally do it everyday." After Neefe and Smith briefly discussed hanging out together "in the mountains," Neefe said at approximately 1:30 p.m., "Id love to still hang and see what I retain as far as germans concerned on acid lol." This was apparently a reference to his recent lessons to learn how to speak German.

The Facebook records also indicate that around the time Neefe made the statements regarding his LSD and cannabis abuse, he also possessed firearms and ammunition. On November 11, 2020, he admitted to another Facebook user that he had "a box of greentip just shy of 100 rounds" that he was willing to sell because he "[g]ot rid of my ar15 and built an ar10 so ive got no need!" A "greentip" is likely a reference to a type of 5.56 cartridge used in assault rifles known for its ability to penetrate hard targets.[15]

[15] Wideners Guns, Ammo & Shooting Blob, *Green Tip Ammo,* available at https://www.wideners.com/blog/green-tip-ammo/ (last visited Feb. 16, 2022).

On November 22, 2020, Neefe asked Smith via Facebook, "Hey man you wanna go to the range and shoot our rifles?" Later that day, Neefe sent another message to Smith: "Well hey man imma head to walmart for targets and earplugs, ive got around 20 5.56. Shells if you need any or dont want to shoot yours. I dont have an ar15 anymore or anything that shoots those rounds so if you wanna meet up at the 944 range ill be there."

History of Extremist Views and Violent Rhetoric

Further troubling, Neefe espouses extremist, racist, and anti-Semitic views coupled with violent rhetoric, a factor that the Court can consider when making a "forward-looking determination about the serious risk" a defendant poses. *See United States v. Hale-Cusanelli,* 3 F.4th 449, 456 (D.C. Cir. 2021) (no plain error when court, in determining serious risk of obstruction of justice and threats to witness as basis for detention, considered prior statements about "'committing violence against those he feels are pitted against him,'" "his desire for a 'civil war' to settle political differences," and "lengthy history of statements condoning violence against persons of other races and religions").

Throughout their Facebook conversations, Neefe and Smith repeatedly spoke favorably of fascism, Nazism, and the possibility of civil war in the United States. For example, on November 4, 2020, Neefe and Smith discussed their dismay about the election results. Smith remarked, "We all deep down knew this was how the election was going to go. Now if Trump wins the riots will be 50 times worse." Neefe replied, "Hope it burns either way." Smith added, "Me to. This country needs to split up immediately." Neefe replied, "Why shouldnt we be the ones to kick it off?"

On November 6, 2020, a friend messaged Neefe, "Is Biden really going to win? How is the only question." Neefe replied, "at this point it doesn't matter who wins to me. Brad and I

predict this goes go supreme court and trump gets the win, then the country goes to war. All jokes aside damned if we do damned if we don't. This place is about to burn and we are getting a survival/escape plan together. Hence the maps."

In addition, Neefe's communications on Facebook are rife with racist and anti-Semitic references that are tied to violence. On December 1, 2020, Smith messaged Neefe, "This wouldn't be happening if Germany won. I'm real close to liking full blown fascism. Fascism is one of the most lied about political ideologies ever and if you look it up it'll give you like 6 completely different definitions but we all know what it is. Its culture, heritage, family history, tradition. And Nobody hates a Communist more than a fascist lol." Neefe replied, "Id rather be a racist, fascist hate monger than a liar 🤡." Smith responded, "If this is what winning the war means then I'm a fascist." Neefe replied, "Hell id rather be a nigger than a commie . . . These sick fucks really do need to start getting turned into mist."

In one particularly astonishing exchange on December 12, 2020, Neefe sent a photo of a hilly outdoor setting, without anyone visible in the scene, to Smith and other Facebook users, and made the following statements:

NEEFE:	Out here lynchin that nigger uncle ben as we speak [11:15 a.m.]
Other User:	What tree you using? [11:19 a.m.]
NEEFE:	Who said it has to be a tree [11:19 a.m.]
NEEFE:	Rope on my bumper works wonders [11:20 a.m.]

After another user sent a meme that read, "Daring today, aren't we," Neefe responded, "Anybody wanna use his body as a sled and ride him up the mountain?"

On the morning of December 15, 2020, at approximately 7:22 a.m., Neefe and Smith began a conversation, apparently referring to the Electoral College's formalization of Presidential election results across the nation the day before:

NEEFE: HAHA BIDEN WON. lol theyre in for a shock.

SMITH: Everybody is saying it's over. He just needs to pull the Trump card and use the fucking military. It's completely botched unless he does something unprecedented that may lead to a Civil War.

NEEFE: Something has to happen dude. I mean we do have the majority of delegation votes. 30 republican to 20 democrat. So if even one person objects jan. 6th itll come down to the delegates.

SMITH: I think Pence just has to refuse to sign it. But I don't even know if we would win having 30 to 20. About 60% of republicans need a bullet in their brain also. My gut tells me something huge is about to go down but I might just be retarded lol. Whether it's Trump, Biden a Civil War or something else all I know is I'm gonna be studying German. It keeps my brain strong & It seriously makes me happy for some reason.

In a continuation of this thread at 6:34 p.m., Neefe remarked, "Looks like mcconnel needs a bullet in the head," apparently referring to then-Senate Majority Leader Mitch McConnell.

D. The Nature and Seriousness of the Danger to Any Person or the Community Posed by the Defendant's Release

The final factor, the nature and seriousness of the danger to any person or the community posed by a defendant's release under § 3142(g)(4), also weighs strongly in favor of Neefe's detention. The charged offenses involve Neefe's considerable preplanning to engage in civil disorder at the Capitol on January 6, including manufacturing a dangerous weapon, the wooden club. He possessed that weapon on restricted and Capitol grounds and attacked law enforcement with another weapon, the large metal sign frame. Even more troubling, Neefe celebrated the violence that occurred at the Capitol, remarking, "Its only going to get more violent . . . Today was total pussy shit dude." He expressed his desire to "line[] up and put down" "every cop who hurled a baton or maced on of us," and said he and other rioters "made sure they knew we fucking OWN them." His vow to "bring[] a gun next time"—coupled with his long history of violent, extremist rhetoric—demonstrates the severe danger to any person or the community posed by his release.

Considering all four relevant factors under § 3142(g), no conditions or combination of conditions can effectively ensure the safety of any other person and the community. Because he engaged in extensive preplanning with a coconspirator to bring weapons to Washington and obstruct the Congressional proceeding on January 6, 2021; possessed a deadly and dangerous weapon on restricted and Capitol grounds; participated in assaulting police officers with a second deadly or dangerous weapon; entered the Capitol and disobeyed police officers' commands to leave the Rotunda; and celebrated the violence after the fact and vowed to bring a gun the next time, Neefe is "in a different category of dangerousness" relative to other Capitol rioters. *Munchel,* 991 F.3d at 1284.[16]

Based on these factors, anything short of detention would be insufficient to assure the safety of others and the community.

V. CONCLUSION

WHEREFORE, the United States respectfully requests that the Court grant the government's emergency motion to stay the release order and grant the motion to detain Defendant pending trial.

Respectfully submitted,

MATTHEW M. GRAVES
UNITED STATES ATTORNEY

[16] Neefe's argument that "'the specific circumstances that made it possible on January 6th, for [individuals] to 'threaten the peaceful transfer of power' no longer exist," and that "[t]his fact alone weighs in favor of release," (Mot. at 12 (citing *Munchel,* 991 F.3d at 1284), is unavailing. The defendants in *Munchel* were not charged with an assault on law-enforcement officers and the Court found no evidence they acted violently. The Court's statement in *Munchel* about the circumstances of January 6th was relevant because it was the presence of a larger violent group that "was critical to [the defendants'] ability to obstruct the vote and to cause danger to the community." Theirs was an entirely different situation than the one presented here, where Neefe engaged in considerable preplanning with Smith to engage in civil disorder, fashioned a weapon to bring to the Capitol, participated in an assault of police officers with a deadly and dangerous weapon, admitted being part of a group that pushed a police officer to gain entry to the Capitol, and celebrated that violence after the fact.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 16, 2022, I served a copy of this pleading on all parties to this matter as indicated in the Court's electronic case files system.

/s/ *Seth Adam Meinero*
SETH ADAM MEINERO
Trial Attorney (Detailee)